

Petitioner, a state prisoner incarcerated at the California State Prison - Solano in Vacaville, California, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his state conviction. The Court dismissed the petition with leave to amend, and on October 1, 2007, petitioner filed a first amended petition. Petitioner has paid the filing fee.

BACKGROUND

Petitioner was convicted in the Superior Court of the State of California in and for Alameda County of first degree murder, and various related charges and sentence enhancements. He received a sentence of 36 years to life in state prison. Petitioner appealed, and the state courts affirmed the conviction. Petitioner filed

1 state habeas petitions in the state courts, and the California Supreme Court denied
2 review on August 2, 2006. Petitioner filed the instant federal habeas action on
3 September 11, 2006.

4

5 DISCUSSION

6 A. Standard of Review

7 This court may entertain a petition for a writ of habeas corpus “in behalf of a
8 person in custody pursuant to the judgment of a State court only on the ground that
9 he is in custody in violation of the Constitution or laws or treaties of the United
10 States.” 28 U.S.C. § 2254(a).

11 It shall “award the writ or issue an order directing the respondent to show
12 cause why the writ should not be granted, unless it appears from the application that
13 the applicant or person detained is not entitled thereto.” Id. § 2243.

14 B. Legal Claims

15 Petitioner claims the following grounds for federal habeas relief: (1) there
16 was insufficient evidence to support the conviction in violation of due process; (2)
17 the “trial court’s refusal to grant a Kelly-Frye hearing on the issue of population
18 substructuring [sic]” denied petitioner his right to due process, (Docket No. 10 at 6);
19 (3) admission at trial of statements obtained in violation of Miranda v. Arizona, 384
20 U.S. 463 (1968), violated petitioner’s Fifth Amendment rights; (4) the trial court
21 violated due process by giving jury instruction CALJIC No. 2.03; (5) petitioner was
22 deprived of his right under the Confrontation Clause to cross-examine Detective
23 Kannisto; (6) petitioner was deprived of his constitutional right to effective
24 assistance of counsel when counsel failed to investigate petitioner’s alibi defense;
25 (7) trial counsel rendered ineffective assistance by failing to investigate forensic
26 DNA evidence; (8) trial counsel rendered ineffective assistance by failing to object
27 to the admission at trial of a tape recorded statement by petitioner; and (9) petitioner
28 was deprived of his constitutional right to the effective assistance of appellate

1 counsel when appellate counsel failed to pursue viable claims on appeal. Liberally
2 construed, these claims appear cognizable under § 2254 and merit an answer from
3 respondent.

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5 CONCLUSION

6 For the foregoing reasons and for good cause shown,

7 1. The clerk shall serve by certified mail a copy of this order and the
8 first amended petition (Docket No. 10) and all attachments thereto on respondent
9 and respondent's attorney, the Attorney General of the State of California. The clerk
10 also shall serve a copy of this order on petitioner.

11 2. Respondent shall file with the court and serve on petitioner, within
12 **sixty (60) days** of the issuance of this order, an answer conforming in all respects to
13 Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
14 habeas corpus should not be issued. Respondent shall file with the answer and serve
15 on petitioner a copy of all portions of the state trial record that have been transcribed
16 previously and that are relevant to a determination of the issues presented by the
17 petition.

18 If petitioner wishes to respond to the answer, he shall do so by filing a
19 traverse with the court and serving it on respondent within **thirty (30) days** of his
20 receipt of the answer.

21 3. Respondent may file a motion to dismiss on procedural grounds in lieu
22 of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
23 Governing Section 2254 Cases. If respondent files such a motion, petitioner shall
24 file with the court and serve on respondent an opposition or statement of non-
25 opposition within **thirty (30) days** of receipt of the motion, and respondent shall file
26 with the court and serve on petitioner a reply within **fifteen (15) days** of receipt of
27 any opposition.

28 4. Petitioner is reminded that all communications with the court must be

1 served on respondent by mailing a true copy of the document to respondent's
2 counsel.

3 5. It is petitioner's responsibility to prosecute this case. Petitioner must
4 keep the court informed of any change of address and must comply with the court's
5 orders in a timely fashion. Failure to do so may result in the dismissal of this action,
6 pursuant to Federal Rule of Civil Procedure 41(b), for failure to prosecute.

7 DATED: November 24, 2008

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James Ware
JAMES WARE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DERRICK EZRE HOLLOWAY,

Case Number: CV06-05545 JW

Petitioner,

CERTIFICATE OF SERVICE

v.

D.K. SISTO, et al.,

Respondent.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 11/25/2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Derrick Ezre Holloway T-72225
California State Prison -Solano
P. O. Box 4000
Vacaville, CA 95696-4000

Dated: 11/25/2008

Richard W. Wiekling, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk